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To: Timothy Sargent  
Pour:

Date:

Object: **DM DRAFT: PERFORMANCE AUDIT OF PROTECTING FISH FROM**  
Objet: **MINING EFFLUENT**

From / De: Leslie Levita, A/Chief Audit Executive

Via:

Additional approvals:  
Autre(s) approbation(s):

☒ Material for the Minister  
Documents pour le Ministre

☐ Your Signature  
Votre signature

☒ Information

Remarks: This briefing note was developed by the Internal Audit Directorate.  
Remarques:

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Fisheries and Oceans  
Canada

Pêches et Océans  
Canada

Deputy Minister

Sous-ministre

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## MEMORANDUM FOR THE MINISTER

### **DM DRAFT: PERFORMANCE AUDIT OF PROTECTING FISH FROM MINING EFFLUENT (FOR INFORMATION)**

#### **SUMMARY**

The purpose of this note is to provide you with information in regards to the Commissioner of the Environment and Sustainable Development's (CESD) Transmission (DM) draft report for the performance audit of *Protecting Fish from Mining Effluent* (Tab 1), and to offer you a briefing on this audit, if required. The DM draft report was provided to your office under separate cover as it is a controlled document.

The CESD audit report is expected to be tabled in Parliament in the spring of 2019.

## BACKGROUND

In accordance with the Treasury Board guidance with respect to the engagement of ministers on audits performed by the Office of the Auditor General (OAG) and the CESD, and the related departmental protocol, the purpose of this memo is to provide information on the performance audit report *Protecting Fish from Mining Effluent*.

On January 25, 2018, the CESD advised the Department via a notification letter that they would be conducting a performance audit of *Effluent Regulations*, for tabling in the Spring 2019 Report of the CESD. During the reporting phase, the title of the audit was subsequently updated to performance audit of *Protecting Fish from Mining Effluent*.

The objective of this audit was to determine whether Environment and Climate Change Canada (ECCC) and Fisheries and Oceans Canada (DFO) protected fish and fish habitat from mining effluent, in accordance with the provisions of the *Fisheries Act*. The CESD audit team examined the application and management of the pollution prevention provisions of the *Fisheries Act* for the mining sector by ECCC and the authorizations granted by DFO for any physical work related to construction of tailings impoundment areas.

On January 25, 2019, the CESD released the DM draft report. Overall, the report concluded that ECCC took steps to protect fish and their habitat from metal mining effluent, however the frequency of the metal mine inspections across regions was inconsistent. The reporting on mine site compliance was also incomplete. CESD noted that ECCC also failed to assess the risks of non-metal mines to fish and their habitat. More positively, the findings determined that both

ECCC and DFO reviewed mining companies' plans to compensate for loss of fish/fish habitat before recommending that the mine waste be disposed of in tailing impoundment areas.

To address the identified gaps, the DM draft contains nine recommendations aimed mostly at ECCC, with only two recommendations directed towards DFO. The recommendations that implicate the Department include: (1) ensuring all fish habitat compensation plans include detailed measures to address the loss of fish and their habitat, and also monitoring mining companies' implementation of these plans; and (2), working with ECCC to identify additional types of enforcement measures to address violations of the *Metal and Diamond Mining Effluent Regulations*.

### **STRATEGIC CONSIDERATIONS**

Prior to the release of the DM draft, the CESD audit team provided a table of disposition outlining how the Department's comments and concerns on the Principle draft were being addressed. The CESD also provided key excerpts of the report, which noted specific changes to certain sections and also changes to the recommendations that implicate DFO. The responsible programs had no concerns with these proposed changes.

As per the DM draft, the findings remain mostly positive for DFO. Since the majority of the recommendations are directed towards ECCC, Departmental officials agree that the findings are consistent with the evidence provided and support the recommendations.

The Internal Audit Directorate (IAD) coordinated the preparation of the response with the relevant sectors, and sought advice and comments from the Departmental Audit Committee's external members.

### **NEXT STEPS**

Departmental officials are available to provide a briefing on this audit, if required.

The final CESD report is expected to be tabled in Parliament in the spring of 2019.



Timothy Sargent  
Deputy Minister

FEB 11 2019

Kevin Stringer  
Associate Deputy Minister

#### **Attachment (1)**

1. CESD – DM Draft (OAG Controlled Document – to be returned to IAD)


**OAG CONTROLLED DOCUMENT – NO COPY  
PERMITTED**

**PROTECTED DOCUMENT HAND DELIVERED TO  
DMO ON JANUARY 29, 2019.**

**DOCUMENT CONTRÔLÉ PAR LE BVG – AUCUNE  
COPIE AUTORISÉ**

**DOCUMENT PROTÉGÉ A ÉTÉ EN MAIN PROPRE  
AU BUREAU DU SM LE 29 JANVIER 2019**

**TAB 1**  
**FISHERIES AND OCEANS CANADA**  
**WORKING TABLE IN RESPONSE TO RECOMMENDATIONS**  
**CESD PERFORMANCE AUDIT OF REGULATING MINING EFFLUENT UNDER THE**  
**FISHERIES ACT**

RECOMMENDATION INFORMATION	Sector responsible for the Action Plan
<p><b>Recommendation DFO - 1 ( par 24)</b>  <b>Department's response:</b> Fisheries and Oceans Canada agrees with the recommendation.</p> <p><b>Fisheries and Oceans Canada's response to the recommendation (200 words maximum):</b> Fisheries and Oceans Canada agrees with the recommendation.</p> <p>Since 2012, Fisheries and Oceans Canada has had in place the <i>Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations</i> which, among other things, set out minimum information requirements to deem an application complete. Since the coming into force of these regulations, proponents seeking a <i>Fisheries Act</i> authorization are legally required to provide the department with detailed information on their proposed offsetting plan(s), including contingency measures and an estimate of implementing each element of an offsetting plan.</p> <p>With regard to monitoring, over the past number of years, Fisheries and Oceans Canada has made efforts to monitor projects near water to ensure compliance with legislation and regulations. Although much progress has been made, the Department recognizes that there is still work to be done with respect to monitoring the adequacy of the offsetting for works, undertakings or activities that required an authorization under the <i>Fisheries Act</i> or its Regulations, such as tailing impoundment areas. As a first step, Fisheries and Oceans Canada is currently revitalizing its monitoring program to ensure the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries. Moreover, Fisheries and Oceans Canada also struck in 2017 an agreement with Environment and Climate Change Canada that establishes clear roles and responsibilities and provides operational guidance with regards to the administration and implementation of the <i>Metal and Diamond Mining Effluent Regulations</i>.</p>	<p style="text-align: center;"><b>Aquatic Ecosystems</b></p>
<p><b>Implementation date:</b> April 2020</p>	<p style="text-align: center;">Approved by    Philippe Moret, ADM, Aquatic Ecosystems</p>
<p><b>Note:</b> Please ensure not to retype sections of the Principal's draft; instead, please make a reference to the paragraph # and sentence.</p>	